FILE NO.: 1236-708

DEORCHIS & PARTNERS, LLP
61 Broadway, 26th Floor
New York, New York 10006-2802
(212) 344-4700

Attorneys for Defendant
ZIM INTEGRATED SHIPPING SERVICES, LTD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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INTERNATIONAL MARINE UNDERWRITERS, a/s/o BRISTOL SEAFOOD INC.,

08 Civ.2777 (JSR)

Plaintiff(s),

ANSWER TO COMPLAINT

v.

M.V. PIONER BAY and M.V. LLOYDIANA Their respective engines, boilers, etc. and ZIM INTEGRATED SHIPPING SERVICES, LTD.,

Defendant(s).
---x

Defendant ZIM INTEGRATED SHIPPING SERVICES, LTD., ("Defendant"), through its undersigned attorneys, allege for its Answer as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of Plaintiffs' Complaint.

3. Admits that ZIM INTEGRATED SHIPPING SERVICES, LTD., is a corporation organized under foreign laws and with an office located c/o its agent at 5801 Lake Wright Drive, Norfolk, Virginia 23502, U.S.A., and that it was at all times relevant engaged in business as a common carrier of merchandise for hire but except as so specifically admitted

denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3 of Plaintiff's Complaint.

4. Denies that the named vessels were general cargo vessels, but except as so specifically denied, denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. Admits that on or about March 16, 2007, ZIM INTEGRATED SHIPPING SERVICES, LTD. agreed to carry a shipment consisting of 4 X 40-foot shipper loaded and sealed shipping containers said by the shipper to contain "frozen haddock" from the port of Maloy, Norway for delivery to Boston, Mass., pursuant to the terms and conditions of a certain bill of lading contract then and there issued, said containers then and there being in apparent external good order and condition, for an agreed upon freight charge and thereafter to deliver said containers to the named consignee, but except as so specifically admitted, denies knowledge and information sufficient to form a belief as to the remaining allegations of paragraph 5 of Plaintiff's Complaint.

6. Denies each and every allegation contained in paragraph 6 of Plaintiffs' Complaint.

7. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Denies each and every allegation contained in paragraph 6 of Plaintiffs' Complaint.

AS AND FOR AFFIRMATIVE DEFENSES TO THE CLAIMS SET FORTH IN THE COMPLAINT, DEFENDANT ZIM INTEGRATED SHIPPING SERVICES, LTD. ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

9. Repeats and realleges each and every admission, denial and denial of knowledge or information contained in Paragraphs 1 through 8 inclusive of this Answer, with the same force and effect as if herein set forth at length.

FIRST AFFIRMATIVE DEFENSE

10. The complaint fails to state a cause of action upon which relief can be granted as against defendant.

SECOND AFFIRMATIVE DEFENSE

11. If any loss and/or damage was sustained by plaintiff as alleged in the complaint, which is specifically denied, said loss and/or damage was solely caused by or contributed to by the fault, neglect, acts or omissions, breach of express and implied warranties, breach of bailment or breach of contract on the part of the shipper or receiver or the owner of the goods and/or their agents or the nature of the shipment or was caused by the acts or omissions of other persons or entities for whom answering defendant is neither responsible nor liable.

THIRD AFFIRMATIVE DEFENSE

12. Plaintiff is not the real party in interest.

FOURTH AFFIRMATIVE DEFENSE

13. There is no privity of contract between plaintiff and answering defendant.

FIFTH AFFIRMATIVE DEFENSE

14. Plaintiff has failed to mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

15. Plaintiff was contributorily negligent in the events giving rise to the claims allegedly asserted herein and thus plaintiff’s recovery, if any, must be diminished in proportion to plaintiff’s own negligence.

SEVENTH AFFIRMATIVE DEFENSE

16. Any loss and/or damage to the shipment as alleged in the complaint, which is denied, was caused in whole or in part by plaintiff's failure to provide adequate instructions concerning the care of the shipment.

EIGHT AFFIRMATIVE DEFENSE

17. Answering defendant is not liable for any loss and/or damage to this shipment as alleged in the complaint, which is expressly denied, by reason of the terms, provisions, exceptions from liability, defenses, conditions, liberties and/or exceptions of the governing contract(s) of carriage, bill of lading, charter parties, contracts, statutes, conventions, Harter Act and/or the General Maritime Law.

NINTH AFFIRMATIVE DEFENSE

18. The maximum liability of defendant ZIM INTEGRATED SHIPPING SERVICES, LTD., if any, is $500 per package as agreed to in the provisions of the bill(s) of lading and under the provisions of the Carriage of Goods by Sea Act, specifically 46 U.S.C. Section 1304(5).

TENTH AFFIRMATIVE DEFENSE

19. That if the goods in suit were damaged, which is denied, the damage was proximately caused by an act or omission of the shipper, for which defendant ZIM INTEGRATED SHIPPING SERVICES, LTD. is not liable under the Carriage of Goods by Sea Act, including but not limited to 46 U.S.C. Section 1304(2)(c) and (q), and by the separate terms of the contract of carriage.

ELEVENTH AFFIRMATIVE DEFENSE

20. Plaintiff failed to give timely notice of the alleged damage, loss or shortage and/or this claim is time barred as per the applicable legislation and/or terms of the subject dock receipt(s), bill(s) of lading, tariff(s), charter(s) and or contract(s) of affreightment.

TWELFTH AFFIRMATIVE DEFENSE

21. That if Plaintiff's cargo suffered any loss or damage, which defendant ZIM INTEGRATED SHIPPING SERVICES, LTD. denies, then such loss or damage resulted from a cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, and the carrier is not liable under the Carriage of Goods by Sea act, 46 U.S.C. Section 1304(2)(Q).

THIRTEENTH AFFIRMATIVE DEFENSE

22. That if the goods in suit were damaged, which is denied, the damage was proximately caused by an act of *force majeure*, for which defendant ZIM INTEGRATED SHIPPING SERVICES, LTD. is not liable by the terms of the contract of carriage.

FOURTEENTH AFFIRMATIVE DEFENSE

23. That if the goods in suit were damaged, which is denied, the damage was proximately caused by heavy weather conditions, for which defendant ZIM INTEGRATED SHIPPING SERVICES, LTD. is not liable by the terms of the contract of carriage

FIFTEENTH AFFIRMATIVE DEFENSE

24. That if the goods in suit were damaged, which is denied, the damage was proximately caused by an act of *God*, for which defendant ZIM INTEGRATED SHIPPING SERVICES, LTD. is not liable by the terms of the contract of carriage.

SIXTEENTH AFFIRMATIVE DEFENSE

25. The plaintiff lacks standing to pursue ZIM INTEGRATED SHIPPING SERVICES, LTD., inter alia, the plaintiff is not the owner of the cargo alleged to have been damaged.

WHEREFORE, Defendant, ZIM INTEGRATED SHIPPING SERVICES, LTD., prays:

(a) That the Court adjudge that they have no liability for any loss or damage alleged in the Complaint and that they have and recover from Plaintiff their costs of defense incurred herein;

(b) that the Complaint be dismissed;

(c) that they may have such other and further relief as may be deemed just and proper in the premises.

Dated: New York, New York
April 28, 2008

DEORCHIS & PARTNERS, LLP
Attorneys for Defendant
ZIM INTEGRATED SHIPPING SERVICES, LTD

By: /s/ John A. Orzel
John A. Orzel (JAO-2420)
61 Broadway, 26th Floor
New York, New York 10006-2802
(212) 344-4700